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GABRIEL CAZARES and MARGARET CAZARES, his wife, Plaintiffs, vs. THE CHURCH OF SCIENTOLOGY OF CALIFORNIA, INC., etc., et al., Defendants.	IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA CASE NUMBER 81-3472-CA-01-F

ORDER

The following matters having come on for consideration before the Court, and specifically the motions heard and argued on July 29th & 30th, A. D., 1982; And, after a full and fair consideration thereof, and having heard oral argument of counsel for the respective parties, the Court makes the following findings of fact and conclusions of law and enters the following Rulings, Judgments, and Orders, to-wit:

1. The Court's Rule to Show Cause concerning the suggestion of indirect criminal contempt of Michael J. Flynn.

2. The motion to dismiss heretofore filed by THE CHURCH OF SCIENTOLOGY as to Counts I and II, and the motion to dismiss heretofore filed by the Defendants, CLYDE H. WILSON, JR., and WILSON, WILSON and NAMACK CHARTERED, together with the latter's alternative motion for more definite statement.

3. The motion of the Defendant, THE CHURCH OF SCIENTOLOGY, to seal the deposition of MARY SUE HUBBARD heretofore taken in California on the 10th day of May, A. D., 1982, through May 12th, 1982.

Before rendering the Court's Findings of Fact and Rulings on each of the above motions, the Court desires to make the following comments concerning the status of this case and the difficulty which the Court has been confronted with the orderly disposition of the numerous motions and pleadings filed herein. The Court notes that this case was first transferred

from Pinellas County to Volusia County, pursuant to an order dated the 10th day of August, A. D., 1981. There have now been a total of 957 filings in this case by the respective parties as of the date of the entry of this Order. This Court, in an effort to conduct an orderly disposition of the numerous motions filed herein, has agreed to set aside one day each month to consider the various motions based upon the order in which each motion was set for hearing, and has further offered to counsel for the respective parties additional time, as desired and needed, to handle any emergency matters, which the parties deem necessary to be considered by the Court out of order.

This is the first opportunity that this Court has had to meet any of the substantive issues raised by the parties and notes for the record that the hearings prior to July 30th, 1982, have dealt primarily with extraneous matter and not with the merits of the case. The Court has carefully considered the oral arguments of counsel for the respective parties as to the hearings conducted by the Court on July 29th and July 30th, 1982; and, after a full consideration of the same, makes the following Findings of Facts relative to each of the motions hereinafter considered and ruled upon by the Court, to-wit:

1. The Court first considers the Rule to Show Cause heretofore issued by this Court to Michael J. Flynn, who is not a party to this action but a potential witness, to show cause why he should not be held in indirect criminal contempt for his filing of a verified Motion to Quash the duly served subpoena on him for the taking of his deposition on April 23rd, 1982, upon the grounds and for the reason that the verified motion may not have been truthful and was done for the purpose of hindering and delaying the processes of the Court. This Court offered to the said Michael J. Flynn the opportunity to be heard on July 29th, 1982, to explain such conduct, and it appearing to the Court that Mr. Flynn was represented by Wesley Fink, Esquire,

Attorney At Law at Daytona Beach, Volusia County, Florida, who, on behalf of Mr. Flynn, declined to offer any matters to the Court in mitigation but elected to exercise his constitutional and statutory rights; therefore, the Court having fully considered the affidavits heretofore filed by the parties and having further heard the testimony of Frederick Carrington, the process server who perfected service upon Mr. Flynn, it is upon consideration thereof, ORDERED AND ADJUDGED by the Court as follows, to-wit:

(a) That Michael J. Flynn be and he is hereby held in indirect criminal contempt for his conduct of rejecting the subpoena duly served upon him on the 19th day of April, A. D., 1982, and his filing of a Motion to Quash, which the Court finds not to be truthful, in that it affirmatively appears that the said Michael J. Flynn was in Clearwater, Florida, on personal business on the 23rd day of April, A. D., 1982, and wilfully failed to appear for the taking of his deposition. That such conduct, coupled with the untruthful verified Motion to Quash, has thwarted and interfered with the orderly processes of this Court and further interfered with the orderly disposition of this case. It is further ORDERED AND ADJUDGED that the said Michael J. Flynn be and he is hereby fined $100.00 for such indirect criminal contempt, and is further ordered to pay the same to the Clerk of the Circuit Court, The Honorable V. Y. Smith, in DeLand, Volusia County, Florida, within 30 days from the entry of this Order, or in the alternative, to serve 10 days in the County Jail of Volusia County, Florida.

(b) The Court next deals with the Motion to Dismiss Counts I and II of the Amended Complaint of the Plaintiffs filed by THE CHURCH OF SCIENTOLOGY and CLYDE H. WILSON, JR., and WILSON, WILSON and NAMACK CHARTERED, and makes the following Findings of Fact. The Court has read and considered the case of The Church of Scientology vs. Gabriel Cazares, decided by the Fifth Circuit Court of Appeals in its opinion found at 638 F. 2d

1272 (1981), which is specifically cited as part of the Plaintiffs' Amended Complaint and which sets forth in some detail the factual basis for the allegations filed by the Defendant, THE CHURCH OF SCIENTOLOGY, against GABRIEL CAZARES in a Title 42, Section 1983, Federal Civil Rights and Defamation Action. The Court carefully considered this opinion, and it is apparent on the face thereof that there was probable cause to bring the stated cause of action under the facts set forth therein and the laws of the State of Florida as set forth in the case of Heard vs. Mathis, 344 So. 2d 641, a decision of the First District Court of Appeals decided in 1977, and other Florida precedents.

In ruling that there was probable cause to bring the stated action, the Court notes that it is the Court's responsibility to determine whether or not there was probable cause, and it is only other factual matters which are necessary to be considered by the jury. See the case of Fee, Parker, and Lloyd, P. A. vs. Sullivan, 379 So. 2d 412, a decision of the Fourth District Court of Appeals of Florida decided in 1980.

It is upon consideration thereof, ORDERED AND ADJUDGED by this Court that Count I, as to the Defendant, CHURCH OF SCIENTOLOGY, and as to the Defendants, CLYDE H. WILSON, JR., and WILSON, WILSON and NAMACK CHARTERED, be and the same is hereby dismissed with prejudice. In so doing, this Court would further note that there have been other persuasive arguments made by both Defendants for the dismissal of Count I on two grounds: (1) That the Complaint in the present suit was prematurely filed; and (2) That the federal suit was a privileged petition for a redress of grievances under the First Amendment to the Constitution of the United States of America. However, this Court feels that there is no necessity at this time to reach these issues by reason of the dismissal with prejudice of Count I as herein entered.

(c) The Court next deals with the motions of the Defendant, THE CHURCH OF SCIENTOLOGY OF CALIFORNIA, INC., and

the motion of the Defendants, CLYDE H. WILSON, JR., and WILSON, WILSON and NAMACK CHARTERED, to dismiss as to Count II. Upon consideration of these motions, the Court finds that from the face of this complaint, that this cause of action was first filed on March 25th, 1980; the Court further finds that the underlying cause of action first accrued on February 3rd, 1976. The Court is, thus, confronted with the statute of limitations argument as advanced by both Defendants for dismissal as to Count II, and finds that as a matter of law, Count II is barred by the statute of limitations. Further, the service of the Complaint in 1976 did not involve seizure of property nor interfere with the person of the defendant in that case. These appear to be necessary to an action for abuse of process.

It is therefore, ORDERED AND ADJUDGED that Count II, as to the Defendant, THE CHURCH OF SCIENTOLOGY OF CALIFORNIA, INC., and the Defendants, CLYDE H. WILSON, JR., and WILSON, WILSON and NAMACK CHARTERED, be and the same is hereby dismissed with prejudice. In entering such motion for dismissal, the Court would further note that the Defendants have made another persuasive argument that the Plaintiff has failed to allege with sufficient particularity the prerequisite elements for a conspiracy. However, the Court having reached its conclusion that Count II maybe disposed of with prejudice, it is not necessary to reach this issue, and specifically, does not rule upon the same.

(d) The Court desires to deal, sua sponte, with the motion of THE CHURCH OF SCIENTOLOGY OF CALIFORNIA, INC., and specifically the motion of the Defendant, MARY SUE HUBBARD, for the sealing of her deposition heretofore taken by the Plaintiffs in California during the time period above set forth; the Court is of the opinion that such deposition and video tapes thereof should be sealed until further order of this Court. It is upon consideration thereof, ORDERED AND ADJUDGED as follows, to-wit: That the deposition of MARY SUE HUBBARD, and specifically the

video tapes thereof, be and the same are hereby sealed and the Clerk of the Circuit Court of Volusia County, Florida, The Honorable V. Y. Smith, be and he is hereby ordered and directed to place the same under seal of this Court, not to be opened without further order of this Court.

(e) The Court notes that one of the counsel for Plaintiffs, The Honorable Walt Logan, has heretofore been disqualified by this Court from representing the Plaintiffs due to a finding by this Court of a violation of the Canons of Ethics. Mr. Logan, through his associate, Anthony Cunningham, has filed a Petition for Rehearing before this Court. The Court specifically offered to counsel for the Plaintiffs an early opportunity to be heard upon this motion, and set aside Tuesday, commencing at 1:30 P.M. on August 3rd, 1982, as a time and place for the hearing of said motion. Notice to counsel was waived in open court, and Mr. Cunningham assured this Court that they would appear. The Court notes that neither Mr. Cunningham or Mr. Logan appeared before the Court to argue said motion, although counsel for THE CHURCH OF SCIENTOLOGY OF CALIFORNIA, INC., Dan R. Warren, Esquire, was personally present, and counsel for CLYDE H. WILSON, JR., and WILSON, WILSON and NAMACK CHARTERED, Mr. William L. Kirk, Esquire, of Orlando, Florida, was personally present, as well as representatives of the Defendant, THE CHURCH OF SCIENTOLOGY. The Court further finds that said motion is now moot by reason of the filing of a Petition for Common Law Writ of Certiorari in the Fifth Circuit Court of Appeals by Walt Logan. Therefore, the Court does not deem it necessary to rule upon the Petition for Rehearing, although counsel has been afforded an adequate opportunity to argue the same.

DONE AND ORDERED in chambers at Daytona Beach, Volusia County, Florida, this 11 day of August, A. D., 1982.

Circuit Judge

Copies hereof to:

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the attached counsel
of record sheet

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